

REMARKS**Overview**

Claims 1-13 and 21-24 are pending in this application. Claims 1, 11, 12 and 13 have been amended. Claim 11 has been amended to correct for antecedent basis. Claims 21-24 are new. The present response is an earnest effort to place all claims in proper form for immediate allowance. Reconsideration and passage to issuance is therefore respectfully requested.

Examiner Interview Summary

The Applicant would like to thank the Examiner for the courtesy extended during the interview of September 23, 2004. The Examiner's interview summary has been reviewed and is accurate and complete.

Election/Restriction Requirement

The provisional election without traverse to claims 1 through 13 is hereby affirmed. Therefore, the Applicant is canceling claims 14-20 as they are drawn to a non-elected invention.

Issues under 35 U.S.C. § 103

Claims 1-14 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Application No. US 2002/0010590 to Lee in view of U. S. Patent No. 5,721,783 to Anderson. These rejections are respectfully traversed.

As the Examiner recognizes, Lee does not disclose an earpiece unit. Yet the Examiner relies upon Lee as the primary reference. In so doing, the Examiner fails to consider the invention as a whole.

For example, the Examiner indicates that Lee discloses a plurality of microphones. This is true, but not in the context of an earpiece. What Lee discloses is a device that has a built-in microphone 101A and an exterior microphone 101B. Therefore, Lee can be said to include a plurality of microphones, however, Lee does not disclose "selecting one of a plurality of microphones of an earpiece unit." The use of multiple microphones within an earpiece is significant because by selecting a different one of the plurality of microphones, a different audio stream is received, translated, and transduced. Thus, not only does Lee not disclose an earpiece unit, it does not disclose selecting one of a plurality of microphones for any purpose that supports the use of an earpiece unit. Lee merely discloses that an external headset jack can be connected in place of the built-in microphone (paragraph 24). Therefore, not only does Lee not disclose an earpiece, Lee does not disclose "selecting one of a plurality of microphones of an earpiece unit." Therefore, it is respectfully submitted that the Examiner is misapplying Lee to claim 1 because Lee does not disclose "selecting one of a plurality of microphones of an earpiece unit" but merely discloses using an internal microphone or an external microphone. As Anderson does not remedy this rejection, it is respectfully submitted that this rejection to claim 1 should be withdrawn. As claims 2-11 depend from claim 1, it is respectfully submitted that these rejections should also be withdrawn.

To further clarify that the claims are directed towards an earpiece, independent claims 1, 12 and 13 have been amended. For example, claim 1 has been amended to require "providing an earpiece having a housing and a plurality of microphones within the earpiece housing". Lee does not disclose this limitation.

There is also an independent reason for patentability of claim 4. Claim 4 requires "wherein the step of translating is performed by a processor disposed within an earpiece." This

step is disclosed neither in Anderson nor Lee. Therefore, this rejection must be withdrawn. It is observed that neither Anderson nor Lee discloses use of a processor within the earpiece. To the extent that Anderson discusses foreign language translation, it is clear that the translation is done by a human operator via a secondary link and not by the earpiece itself (col. 26, lines 16-19).

There is also an independent reason for patentability of claim 5. Claim 5 requires "the plurality of microphones includes a front facing microphone, a rear facing, and a side facing microphone." This limitation is not disclosed in either Lee or Anderson. Therefore this rejection must be withdrawn.

There is also an independent reason for patentability of claim 8. Claim 8 requires that "the earpiece is nonocclusive." The Examiner does not indicate the presence of this limitation in either Lee or Anderson, therefore, this rejection must also be withdrawn for this independent reason, and the Examiner has failed to make a *prima facie* case of obviousness.

Claim 12 also requires "selecting one of a plurality of microphones of an earpiece unit." Lee does not disclose this step and to the extent that Lee includes a plurality of microphones, the microphones are an external microphone and a built-in microphone and therefore of a different character than a plurality of microphones of an earpiece unit. Therefore, this rejection must be withdrawn on that basis. It is also observed in claim 12 that a translation device performs the translating, which is not disclosed in Anderson which uses a human operator. Therefore, it is respectfully submitted that this rejection to claim 12 should also be withdrawn. Moreover, claim 12 has been amended to require "providing an earpiece having a housing and having a plurality of microphones within the housing and a speaker within the housing." This limitation further makes clear the structural differences between Lee and the invention claimed in claim 12.

Claim 13 also requires "selecting one of a plurality of microphones of an earpiece unit."

This limitation is not disclosed in neither Anderson nor Lee, therefore, it is respectfully submitted that this rejection must be withdrawn as well. Moreover, claim 13 has been amended to require "providing an earpiece having a housing and having a plurality of microphones within the housing." This limitation further makes clear the structural differences of Lee.

New Claims

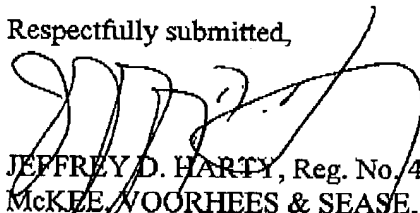
Claims 21-24 are new. Support for claims 21-24 is clear from the original Specification, including at least the original claims and drawings. It is noted that all claims 21-24 include a "nonocclusive earpiece." Therefore, it is respectfully submitted that claims 21-24 are distinguishable from both Lee and Anderson in that basis.

Conclusion

Please charge Deposit Account No. 26-0084 the amount of \$43.00 for the one additional independent claim over 3. No other fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,



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